IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1155 of 2005
Date of decision 17 .4.2007

V.B.Handa .. petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.A.K.Chopra, Sr. Advocate
Mr. N.D.Kalra, Advocate for the petitioner
Mr. Anmol Rattan Singh, Addl.AG Punjab for respondent nos. 1 and 2.
Mr. Hem Raj Mittal, Advocate for respondent no.3.

M.M.Kumar, J.

The prayer made by the petitioner in this petition filed under Article 226 of the Constitution is to strike down the qualification of Bachelor's Degree or AMIE in Engineering for promotion to the post of Senior Environmental Engineer as added in Appendix B to the Punjab Pollution Control Board Employees Service Regulations, 2002. As a consequential relief, the petitioner has claimed that promotion of respondent no.3 as Senior Environmental Engineer be quashed by issuing direction to the respondents to consider the case of the petitioner being senior for promotion to the post of Senior Environmental Engineer w.e.f. the date the post had become available.

The facts are not in dispute. The petitioner was appointed as Junior Sanitary Engineer with the respondent Board on 13.9.1976 which was later designated as Junior Environmental Engineer. In pursuance to the power conferred under Section 12 (3A) of the Water Pollution (Prevention

and Control of Pollution)Act, 1974, the Board has framed regulations known as The Punjab Pollution Employees Service Regulations, 1980 (for short 'the 1980 Regulations). According to Regulation 9 read with Regulation 13 of the 1980 Regulations for promotion to the post of Senior Environmental Engineer a person is required to have worked for seven years in the feeder cadre and he should possess the degree in engineering.

We find that the matter is squarely covered by a Division Bench judgement of this Court in the case of Babu Ram v. The Punjab Pollution Control Board 1999(4) SCT 219. This Court, after considering argument concerning the qualification of degree laid down for promotion to the post of Senior Environmental Engineer, has concluded as under:

> " The contention is fallacious. Regulation 8 postulates three methods of appointment viz. Direct, promotion and transfer on deputation. We find nothing in Regulation 9 which may warrant that the Board can create only such posts as can be filled up by direct recruitment or that it can lay down qualifications for only appointment by direct recruitment. In our view, while promulgating Regulation 9(2), the State Government has authorised the Board to create additional posts, lay down method of appointment and the qualifications therefor. Of course, the method of recruitment has to conform to the provisions of Regulation 8.
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> Mr. Chopra contended that under Regulation 13, the claim for promotion has to be considered only on the basis of merit cum seniority. The qualifications cannot be introduced.
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> The contention is misconceived. The employer has an

undoubted right to prescribe qualifications for a post. This right is subject to the condition that the qualifications must have a reasonable nexus with the job requirements. The qualifications should not be fanciful or arbitrary. In the present case, the prescribed qualifications are a degree in Engineering and seven years' experience as an Environmental Engineer. In other words, for promotion to the post of Senior Environmental Engineer, a person should have worked for seven years in the feeder cadre. The qualifications are not even alleged to be arbitrary or unfair. These have a nexus with the requirements of the post of Senior Envinromental Engineer. The qualifications are reasonable. The action of the Board in laying down these qualifications is in conformity with Regulation 9(2). It is only from amongst the eligible persons that appointment by promotion can be made in accordance with Regulation 13. Respondent no.4 having been promoted as an Environmental Engineer in the year 1985 was far senior to the petitioner. He had worked eight years longer than him. He was eligible. He had worked for more than 13 years by the date of the issue of the order of promotion. As against this, the petitioner had worked for only five years. In this situation, the action of the respondents was just and fair. It was in conformity with the regulation. It calls for no interference.

Mr. Chopra contended that the Board had erred in getting the post de-reserved.

The contention is misconceived. It is the admitted

position that when an eligible member of the Scheduled Castes is not available, the post can be de-reserved. The instructions contain a mandatory provision that the conditions of eligibility "for a post would not be lowered with a view to accommodating any candidate". It has not even been suggested that an eligible candidate was available. Resultantly, no fault can be found with the action of the respondents:"

When the facts of the present case are examined in the light of the Division Bench judgement in Babu Ram's case (supra) it has to be concluded that in the absence of degree qualification, the petitioner cannot be considered for promotion who is admittedly a diploma holder. It is significant to notice that no argument was raised questioning the validity of Appendix "B" of the Regulations which added the provision of degree qualification probably for the reason that matter is already concluded by the Division Bench judgement in Babu Ram's case (supra) Thus there is no merit in the petition. Accordingly, the same is dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

17.4.2007
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